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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,232	12/09/2003	Isabel Quistian JR.	RYAN-001	4907

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Law Office of Alan W. Cannon
834 South Wolfe Road
Sunnyvale, CA 94086

EXAMINER

GRAHAM, GARY K

ART UNIT	PAPER NUMBER
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1744

MAIL DATE	DELIVERY MODE
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08/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/731,232

Applicant(s)

QUISTIAN, ISABEL

Examiner

Gary K. Graham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mentges (German patent 29900194) in view of Ernst (GB patent 1,290,401).

The patent to Mentges discloses the invention substantially as is claimed. Mentges discloses a device for cleaning feet (see figure) in the bath tub or shower that includes a base portion (not numbered but identified by the term unterteil) with a pair of side walls (not numbered but identified by the term seitenteil) extending upwardly therefrom and having open end portion extending between ends thereof. A first scrubbing means in the form of bristles (5,6,7) are mounted on inner wall surfaces of said side walls and second scrubbing means in the form of bristles (5,6,7) are mounted on an upper surface of the base portion and extend between the first scrubbing means. Suction cups (not numbered but identified by the term saugnäpfe) extend from a bottom surface of the base portion for attaching the device to a surface.

The patent to Mentges discloses all of the above recited subject matter with the exception of a bar of soap provided on a material support which is biased with respect to the base portion to a height to make contact with a users foot.

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The patent to Ernst discloses a body cleaning device (fig.2) for use in showers that includes scrubbing bristles (2) extending from a base portion (1) and a bar of soap (19) supported on a material support (12) that is biased by helical springs (15) to extend to a height from the base portion higher than the bristles. Ernst discloses combining of the soap and cleaning device such that separate manipulation of soap is not required.

It would have been obvious to one of skill in the art to provide the device of Mentges with a cleansing material support with bar soap thereon biased from the base of the device to extend from the base higher than the bristles, as clearly suggested by Ernst, to eliminate separate manipulation of soap with the foot to be cleaned.

With respect to claim 2, it appear the material support of Ernst extends to a level below the scrubbing means, as is claimed.

Response to Arguments

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

As set forth above, the patent to Mentges discloses the open end portions that have been added to the claims. It thus appears that the modified brush of Mentges would function as argued to clean all parts of the foot.

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Applicant argues that neither Baumbach (and presumably Mentges) nor Ernst suggest placement of a bar of soap within the base of the foot brush of Baumbach (and presumably Mentges). Such is not persuasive. The fact that the references do not mention one another specifically or specifically suggest the combination does not make improper the combination. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Applicant also argues that it would not have been obvious to modify the device of Baumbach as suggested by the Examiner, because it would be ineffective for applying soap to the heel region and tops of the toes of a user. In-so-far as the arguments apply to the new ground of rejection, such are not persuasive. Whether or not providing the device of Mentges with soap would be ineffective for applying soap to the heel region or tops of the toes does not make non-obvious the combination. Such would still aid in the use of soap during cleansing and eliminate some of the manual application of soap. Further, it is not clear why the heel region or tops of the toes could not receive soap thereon in the modified Mentges device. Various angling of the foot and bending of the toes would appear to enable the application of soap to all the portions thereto. Additionally, if the modified Mentges device is not able to apply soap to the heel or tops of the toes, then neither would applicant's device since the same structure results.

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Gary K. Graham', with a long horizontal line extending from the left side of the signature.

Gary K Graham
Primary Examiner
Art Unit 1744

GKG
13 August 2007